

DEPARTMENT OF STATE REVENUE

**LETTER OF FINDINGS NUMBER: 98-0405
SALES AND USE TAX
FOR TAX PERIODS: 1994-1996**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

1. Sales and Use Tax: Rental of Tangible Personal Property

Authority: IC 6-2.5-2-1 (a), IC 6-2.5-3-7.

Taxpayer protests the imposition of sales tax on certain rentals of tangible personal property.

2. Tax Administration: Penalty

Authority: IC 6-8.1-10-2.1, 45 IAC 15-11-2(b).

Taxpayer protests the imposition of the penalty.

Statement of Facts

The taxpayer sells, rents and services material handling equipment, especially forklifts. The taxpayer has a location in Louisville, Kentucky that serves the southern Indiana area. After a routine audit, the Indiana Department of Revenue assessed the taxpayer with additional sales and use tax, interest and penalty. The taxpayer protested a portion of this assessment. Further facts will be provided as necessary.

1. Sales and Use Tax: Rental of Tangible Personal Property

Discussion

Pursuant to the provisions of IC 6-2.5-2-1 (a), the Indiana sales tax is imposed on “retail transactions made in Indiana.” IC 6-2.5-4-10 defines the rental of tangible personal property as a retail transaction subject to the sales tax. Taxpayer rented forklifts to several Indiana concerns and failed to collect sales tax for remittance to Indiana on some of those sales. The audit assessed additional sales tax to Taxpayer on those sales.

Taxpayer produced an Indiana Department of Revenue exemption certificate for the assessment that it protests. Pursuant to IC 6-2.5-3-7, a retailer is not obligated to collect and remit sales tax on any retail transaction when it has an Indiana Department of Revenue exemption certificate from that purchaser.

Finding

Taxpayer’s protest is sustained.

2. Tax Administration: Penalty

Discussion

Taxpayer’s final point of protest concerns the imposition of the ten per cent negligence penalty pursuant to IC 6-8.1-10-2.1. Indiana Regulation 45 IAC 15-11-2 (b) clarifies the standard for the imposition of the negligence penalty as follows:

“Negligence”, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer’s carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence.

The rules concerning the collection of sales tax on rental contracts are clear and easily accessible in Indiana Department of Revenue publications. Although Taxpayer’s protest was sustained, Taxpayer failed to collect and remit sales tax on other rentals and sales. Additionally, Taxpayer failed to self assess and remit use tax on materials used to fulfill its maintenance agreements. Taxpayer’s failures constitute negligence.

Finding

Taxpayer’s final point of protest is denied.